

## Chapter 6. Rights and Powers and Good Title

**6.1. Introduction.** This chapter discusses the sponsor's federal obligation to preserve its rights and powers and to maintain good title to the airport property. This chapter also discusses related issues such as transfers to other recipients, delegation of federal obligations, subordination of title, airport management agreements, and airport privatization.

It is the responsibility of the airports district offices (ADOs) and regional airports divisions to ensure the sponsor can fulfill its federal responsibilities at all times. Accordingly, these offices will advise sponsors when the terms of any proposed lease agreements have the effect of limiting the sponsor's ability to fulfill its federal obligations. The FAA headquarters Airport Compliance Division (ACO-100) advises sponsors on the pilot program for airport privatization and approves or denies applications.

**6.2. Airport Governance Structures.** The sponsor determines the management and organizational structure of an airport. The type of structure employed can vary depending on whether the sponsor is a private entity or public agency, or whether the sponsor delegates all or some of its management responsibilities to a third party.

### 6.3. Controlling Grant Assurances.

**a. Grant Assurance 4, Good Title.** This grant assurance requires a sponsor to hold good title to the airport satisfactory to the FAA or to give satisfactory assurance to the FAA that good title will be acquired. In some cases, based on information available, the FAA may be unable to determine how the airport property was acquired or if a sponsor has title to all airport property. Adding to the confusion sometimes is an Exhibit "A" property map that may not be current or show all property interests.

Therefore, to determine a sponsor's compliance with Grant Assurance 4, *Good Title*, FAA should request that the sponsor provide the FAA with a complete Title Search Report of all airport property depicted on the current Airport Layout Plan (ALP) and Exhibit "A" maps. This should identify the actual parcels comprising the entire airport property.

When determining initial eligibility, the FAA should require a Title Search Report to ensure that the sponsor has good title to the parcels necessary to achieve the purpose of the grant and the role of the airport. When a sponsor acquires land for a project funded under an Airport Improvement Project (AIP) grant, the FAA and the sponsor must follow the FAA Advisory Circular for land acquisition to ensure the sponsor has acquired sufficient land rights. The FAA may also request a Title Search Report when the FAA has concerns about the documentation of land holdings on an Exhibit "A." Finally, when transferring sponsorship or reviewing an application to the Airport Privatization Pilot Program, the FAA may request a Title Search Report.

A lack of good title can prevent the processing of a grant – even without a finding of noncompliance – because such a sponsor would not be eligible as a threshold requirement. If a sponsor gives away good title, such action might be a violation of Grant Assurance 5, *Preserving*

*Rights and Powers.* However, the determination of good title does not necessarily require fee simple ownership. Long-term leases may be sufficient rights to allow an AIP improvement grant.

**b. Grant Assurance 5, *Preserving Rights and Powers.*** A sponsor cannot take any action that may deprive it of its rights and powers to direct and control airport development and comply with the grant assurances. Grant Assurance 5, *Preserving Rights and Powers*, requires a sponsor not to sell, lease, encumber, or otherwise transfer or dispose of any part of its title or other interests in the property shown on Exhibit “A” without the prior written approval of the FAA.

Of particular concern to the FAA is granting a property interest to tenants on the airport. These property interests may restrict the sponsor’s ability to preserve its rights and powers to operate the airport in compliance with its federal obligations. Providing developers with an option to acquire a fee interest in federally obligated airport property is not acceptable to the FAA under Grant Assurance 5, *Preserving Rights and Powers*. An option to acquire a fee interest in airport property should be considered a sale of airport property for purposes of requiring an FAA release, since the result is potentially the same.

**6.4. Interrelationship of Issues.** When analyzing lease agreements, FAA personnel must be aware of the interrelationship of material covered in other federal obligations, such as Grant Assurance 22, *Economic Nondiscrimination*, Grant Assurance 23, *Exclusive Rights*, Grant Assurance 24, *Fee and Rental Structure*, and Grant Assurance 25, *Airport Revenues*.

**6.5. Assignment of Federal Obligations.** The sponsor’s federal obligations discussed in this chapter apply to both public and private airport sponsors who are obligated under agreements with the federal government. Chapter 22 of this Order, *Releases from Federal Obligations*, discusses the release of federally obligated property.

**6.6. Rights and Powers.** Grant Assurance 5, *Preserving Rights and Powers*, requires the airport sponsor to preserve its rights and powers to control and operate the airport. The following addresses the six parts of this grant assurance:

**a. Sponsor Actions.** The sponsor must obtain the Secretary’s written approval before taking any action that would deprive it of the rights and powers necessary to perform any terms, conditions, and assurances in the grant agreement. In addition, the sponsor must take the actions necessary to regain its rights and powers, including extinguishing rights of other parties that prevent the sponsor from complying with its federal obligations. A method a sponsor may use in this regard is to place a “subordination clause” in all of its tenant leases and agreements that subordinates the terms of the lease or agreement to the federal grant assurances and surplus property obligations. A subordination clause may assist the sponsor in amending a tenant lease or agreement that otherwise deprives the sponsor of its rights and powers. A typical subordination clause will state that if there is a conflict between the terms of a lease and the federal grant assurances, the grant assurances will take precedence and govern.

**b. Disposals.** The sponsor must obtain the FAA's written approval before it sells, leases, encumbers, transfers, destroys, or disposes of any of its interest in airport or noise compatibility property. (See chapter 22 of this Order, *Releases from Federal Obligations*, for additional information on releases and disposal of property.)

**c. Noise Compatibility Program Projects.** For noise compatibility projects where the local government grantee is not the airport sponsor itself, the airport sponsor must enter into an agreement that applies the grant assurance obligations to that other local government entity.

**d. Noise Compatibility Program Projects on Privately Owned Land.** For noise compatibility projects on private property, the airport sponsor will enter into an agreement with the property owner that contains conditions specified by the FAA.

**e. Private Airport Sponsors.** If the sponsor is a private sponsor, it will assure the FAA that the airport will continue to function as a public use airport.



*During its review, the FAA will look to identify any terms and conditions of the agreement that could prevent the realization of the full benefits for which the airport was constructed or conveyed. For example, as in the case illustrated above at Gillespie Airport in San Diego, a racetrack exists inside the airport without FAA approval. The situation was later corrected. In all cases, the sponsor may not enter into leases permitting nonaeronautical use without FAA concurrence. (Photo: FAA)*

***If the sponsor arranges for another entity to manage the airport, it must retain sufficient rights and authority to assure that the third-party manager operates and maintains the airport in accordance with the federal obligations and the sponsor's grant agreement.***

**f. Contracting Out Airport Management.** If the sponsor arranges for another entity to manage the airport, it must retain sufficient rights and authority to assure that the third-party manager operates and maintains the airport in accordance with the federal obligations and the sponsor's

grant agreement. As discussed below, the sponsor is not relieved of its responsibility under the grant assurances by such an arrangement.

#### **6.7. Transfer to another Eligible Recipient.**

**a. Rights and Powers.** Grant Assurance 5, *Preserving Rights and Powers*, prohibits the airport sponsor from entering into an agreement that would deprive it of any of its rights and powers that are necessary to perform all of the conditions in the grant agreement or other federal obligations unless another sponsor/operator assumes the obligation to perform all such federal requirements. When an airport sponsor transfers authority to another sponsor, whether public or private, the FAA will review the transfer document to ensure there is no ambiguity regarding responsibility for the federal obligations. Before a transfer to another entity can take place, the FAA must specifically determine the recipient is eligible and willing to perform all the conditions of the grant agreements. Otherwise, the FAA will not permit the transfer to occur. As a condition of release, the FAA will require the new operator to assume all existing grant obligations, and the FAA will review the transfer document to ensure there is no ambiguity regarding responsibility for the federal obligations. In some cases, it may be appropriate to continue the existing sponsor's obligations in effect, in full or in part, especially where the existing sponsor is the only local government entity that could assure compliance. For example, a local municipality with zoning authority may transfer the airport to an airport authority with no off-airport zoning power. In that case it would be appropriate not to release the municipality from its existing obligations to protect the airport environs from incompatible uses and obstructions.

**b. Surplus Property Transfers.** Although surplus property instruments permit the conveyance to a third party, the sponsor must obtain FAA approval prior to its transfer, and the transferee must assume the federal obligations of the original grantee. In addition, a release deed will also be required. Eligibility to assume these federal obligations is contingent upon the type of sponsor and certain legal and financial requirements.<sup>9</sup> For example:

**(1). General.** Sponsors must be legally, financially, and otherwise able to assume and carry out the certifications, representations, warranties, assurances, covenants and other federal obligations required of sponsors and contained in the obligating documents.

**(2). Authority to Act as a Sponsor.** FAA will require an opinion of the sponsor's attorney as to its legal authority to act as a sponsor and to carry out its responsibilities under the applicable agreements when deemed necessary or desirable.

**(3). Reassignment.** The federal government grants deeds of conveyance only to public agencies, but it does not specifically restrict reassignments or transfers of the property conveyed. The donating federal agency may reassign or transfer the property to another public agency for continued airport use. When this occurs, the FAA should assume the lead in the coordination between the affected parties.

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<sup>9</sup> For additional information, see FAA Order 5100.38, *Airport Improvement Program (AIP) Handbook*, which is available online.

## 6.8. Transfer to the United States Government.

**a. Conveyance to a Federal Agency.** The FAA cannot prohibit a sponsor from conveying to a federal agency any airport property that was transferred under the Surplus Property Act of 1944, as amended. Such a conveyance, whether voluntary or otherwise, does not place the conveying sponsor in default of any obligation to the United States. Such a conveyance has the effect of a complete release of the conveying owner.

**b. FAA Objections.** When a sponsor proposes such a conveyance or has accomplished the conveyance without prior notice, the ADO or regional airports division will determine if the transfer adversely impacts civil aviation. If so, it must make any objection immediately known to both the sponsor and the federal agency involved. If the ADO or regional airports division cannot obtain a satisfactory solution, it should submit a full and complete report to the Airport Compliance Division (ACO-100) without delay. ACO-100 will then continue to work with the sponsor and the federal agency to reach a satisfactory solution.

**6.9. Delegation of Federal Obligations.** Sponsors may enter into arrangements that delegate certain federal obligations to other parties. For example, an airport authority may arrange with the public works department of a local municipality to meet certain maintenance commitments, or a sponsor may contract with a utility company to maintain airfield lighting equipment. More prevalent at small airports are arrangements in which the sponsor relies upon a commercial tenant or franchised operator to cover a broad range of airport operating, maintenance, and management responsibilities.

None of these contractual delegations of responsibility absolves or relieves the sponsor of its primary obligations to the federal government. The sponsor should pay particular attention that delegations to other parties do not result in a conflict of interest or a violation of the federal grant assurances. The sponsor shall not delegate or transfer its authority to negotiate and enter into aeronautical



*Airport Management and Operating Agreements. Although the sponsor may delegate or contract with an agent of its choice for maintenance or supervision of operations, such arrangements do not relieve the sponsor of its federal obligations. Such arrangements also have the potential for a conflict of interest. Consequently, any agreement conferring such responsibilities on a tenant must contain adequate safeguards to preserve the sponsor's control over the actions of its agent and ensure the sponsor's ability to meet its federal obligations. The review of such agreements by the FAA ensures that the sponsor will make the airport facilities available to the public on fair and reasonable terms without unjust discrimination consistent with Grant Assurance, 22, Economic Nondiscrimination. (Photo: FAA)*

and nonaeronautical leases and agreements (unless released by the FAA in connection with a formal transfer of operating responsibility).

#### **6.10. Subordination of Title.**

**a. Subordination.** The FAA will normally consider subordination of the sponsor's fee interest in airport property by mortgage, easement, or other encumbrance as a transaction that would deprive the sponsor of the rights and powers necessary to fulfill its federal obligations.

However, the sponsor may subordinate its interest in a tenant lease to facilitate tenant financing for development on airport property. In this case, the sponsor agrees only that the mortgage or financing is serviced ahead of the payment to the sponsor for the lease of airport property.

**b. Review.** If the FAA determines that an encumbrance may deprive a sponsor of its ability to fulfill its federal obligations, the Secretary may withhold approval of grant applications from the sponsor. (See chapter 2 of this Order, *Compliance Program*, paragraph 2.7c.) The ADO or regional airports division should review such encumbrance documents and make a determination on a case-by-case basis. Determinations should be in accordance with Grant Assurance 4, *Good Title*, and Grant Assurance 5, *Preserving Rights and Powers*. It may be appropriate to consult with the Office of Chief Counsel (AGC-610).



*Title with respect to lands to be used for the airfield or building area purposes can be either fee simple title (free and clear of any and all encumbrances) or title with certain rights excepted or reserved, such as a long-term lease of 20 or more years. Any encumbered title must not deprive the sponsor of possession or control necessary to carry out all federal obligations. This includes ensuring that approaches and departure areas are clear of obstacles and incompatible land uses to ensure safe and efficient flight operations as shown in the above photograph during a landing in rapidly worsening weather. (Photo: FAA)*

**c. FAA Determination.** The FAA should predicate its concurrence with any lien, mortgage, or other encumbrance to federally obligated property on a factually based and thoroughly documented determination. Ideally, the FAA office working the issue should ask the sponsor to execute a declaration recognizing that the federal grant obligations survive a foreclosure or bankruptcy. The possibility of foreclosure or other action adverse to the airport should be so remote that it reasonably precludes the possibility that such a lien, mortgage, or other encumbrance will prevent the sponsor from fulfilling its federal obligations.

**6.11. New Sponsor Document Review.** Generally the ADO or regional airports division will determine whether a potential sponsor is capable of assuming federal responsibilities. This review requires that the sponsor be legally, financially, and otherwise able to assume and carry out the certifications, representations, warranties, assurances, covenants, and other federal obligations required of the sponsor and contained in the Airport Improvement Program (AIP) project application and grant agreement forms.

The sponsor must also show that it has the authority to act as a sponsor. The FAA must also obtain an opinion from the sponsor's attorney as to the sponsor's legal authority to act as a sponsor and whether that authority extends to fulfilling its grant assurance responsibilities.

**a. Purpose.** The review is intended to ensure that the new sponsor has and will maintain the necessary control of the airport needed to carry out its commitments to the federal government. During its review, the ADO or regional airports division will identify any terms and conditions of a lease, contract, or agreement that could prevent the realization of the full benefits for which the airport was constructed or that could render the sponsor noncompliant with its federal obligations. The sponsor may place a standard clause in all its agreements that the terms and conditions of the agreement shall be subordinate to the federal grant assurances and any surplus property federal obligations.

**b. Aeronautical Access to Facilities.** The review ensures that the sponsor will make the airport facilities available to the public on reasonable terms without unjust discrimination, as required by Grant Assurance, 22, *Economic Nondiscrimination*. Any lease, contract, or agreement granting a tenant the right to serve the public on the premises of a federally obligated airport should not interfere with the sponsor's ability to maintain sufficient control over the operation of the airport to guarantee that aeronautical users will be given fair access to the airport.

**c. Self-sustaining.** The review looks to ensure that the sponsor maintains a fee and rental structure for facilities and services that will make the airport as self-sustaining as possible, as required by Grant Assurance 24, *Fee and Rental Structure*.

**d. Good Title.** The review will ensure that the sponsor has, or will have, good title to the airfield, as required by Grant Assurance 4, *Good Title*.

**e. No Granting of Exclusive Rights.** The review will ensure that the sponsor has not granted an exclusive right for aeronautical use of the airport, as required by Grant Assurance 23, *Exclusive Rights*.

**f. Revenue Use.** The review will ensure that the sponsor makes proper use of its airport revenues, per Grant Assurance 25, *Airport Revenues*, and FAA's *Policy and Procedures Concerning the Use of Airport Revenue*, 64 Fed. Reg. 7696, February 16, 1999, (*Revenue Use Policy*), found in Appendix E of this Order.

**g. Examination of Documents.** During the review, the ADO or regional airports division must examine the following documents:

(1). The public agency's enabling legislation or act that gives it the authority to operate and own the airport(s).

(2). The lease, operations, management, or transfer agreements for the specific airport.

(3). The Exhibit "A" map, ALP, and land inventory map identifying grant obligated land.

(4). The assumption agreement for existing grants, federal grant obligations, and disposition and status of transferred grants.

(5). Any other agreements between the parties relating to the terms of the transfer and the new sponsor's operation of the airport.

#### **h. Sponsor Eligibility.**

Eligibility to receive funds under the AIP is contingent upon the type of sponsor and the type of activity for which the funds are sought.

#### **6.12. Title and Property Interest.**

##### **a. Title Requirement (Grant Assurance 4, *Good Title*).**

Section 47106(b)(1) of Title 49 U.S.C. requires that no project grant application for airport development may be approved by the Secretary unless the sponsor, a public agency, or the United States holds good title (satisfactory to the Secretary) to the airfield, or gives assurance to the Secretary that good title will be



*The sponsor must maintain the rights and powers to develop or improve the airfield as it sees fit, regardless of the desire and views of its agent or tenants, and without interference or hindrance of same. For example, the airport may choose to install gates to control pedestrian or general public access to ramp areas as shown here at the Lunken Airport in Cincinnati, Ohio. The fact that a tenant sees no reason for the action does not prevent the airport from doing so. (Photo: FAA)*

acquired. Good title is a pre-condition for award of an AIP grant, and is usually reviewed in connection with grant applications rather than as a compliance issue for a grant already awarded. The Airports Financial Assistance Division, APP-500, should be advised of any issue regarding good title.

**b. Airport Property Interest.**

Title with respect to the airport land can be either fee simple title (free and clear of any and all encumbrances) or title with certain rights excepted or reserved, such as a long-term lease of 20 or more years.

***Any encumbered title must not deprive the sponsor of possession or control necessary to carry out all federal obligations.***

Any encumbered title must not deprive the sponsor of possession or control necessary to carry out all federal obligations. A deed containing a reversionary clause, (e.g., “so long as the property is being used for airport purposes”) does not negate good title provided that the other federal conditions or requirements are satisfied.

Where rights exempted or reserved would prevent the sponsor from carrying out its federal obligations under the grant, such rights must be extinguished prior to approval of the project subject to an AIP grant.

**c. Determination of Adequate Title.**

A certification by a sponsor that it has acquired property interests required for a project may be accepted in lieu of any detailed title evidence. (See FAA Order 5100.37B, *Land Acquisition and Relocation Assistance*, available online.) Without such certification, the sponsor’s submission of title evidence must be reviewed to determine adequacy of title. The adequacy of such title is an administrative determination made by FAA Office of Airports personnel and need not be submitted to regional counsel for review unless there is any question about the adequacy of the title.

**d. Title Requirement Prior to Notice to Proceed.**

Authorization for the sponsor to issue a notice to proceed with grant funded work on property to be acquired by the sponsor should not be given until it has been determined that all property interests on which construction is to be performed have been, or will be, acquired in conformance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act). (See Advisory Circular (AC) 150/5100-17, *Land Acquisition and Relocation Assistance for Airport Improvement Program Assisted Projects*, for additional information on this topic.)

### **6.13. Airport Management Agreements.**

**a. Responsibility Under Airport Management and Operations Agreements.** Although the sponsor may delegate or contract with an agent of its choice for maintenance or supervision of operations, such arrangements do not relieve the sponsor of its federal obligations. Such arrangements also have a high potential for a conflict of interest where the tenant provides aeronautical services itself and at the same time can exercise some control over access and competition at the airport. Consequently, any agreement conferring such responsibilities on a tenant must contain adequate safeguards to preserve the sponsor's control over the actions of its agent. In addition, to avoid conflicts with a sponsor's federal obligations, the FAA strongly encourages a management contract to be a separate agreement from leases or airfield use agreements held by the agent of the sponsor. This makes the respective responsibilities for each activity clear, and also enables the sponsor to deal with a possible default in one activity (i.e., management agreement) without terminating a second, separate activity not subject to a default, such as an unrelated land lease.

**b. Total Delegation of Airport Administration.** In certain cases a sponsor may consider contracting with a private company for the general administration of a publicly owned airport. Whether this is done by lease, concession agreement, or management contract, it has the effect of placing a private entity in a position of substantial control over airport decisions that may affect the public sponsor's grant compliance. This kind of agreement should include provisions adequately protecting and preserving the owner's rights and powers to assure grant compliance.

**c. Lease of Entire Airport.** If the sponsor grants a lease for the entire airport, the lease will generally include the right to sublease airport property to third-party tenants for aeronautical services and development. In such cases, the lessee may have the right to conduct a commercial business on the airport directly and also to control the granting of such commercial rights to others. This situation creates a high potential for violating Grant Assurance 23, *Exclusive Rights*, unless mitigated, and the lease should provide for the sponsor to retain sufficient rights to prevent and reverse the granting of any exclusive rights on the airport.

**d. Lease Terms that Protect the Sponsor's Rights and Powers.** In cases where a management contract or general lease provides a private operator with the ability to make decisions on access by other aeronautical tenants, the inclusion of contract provisions similar to the following can assure that the public sponsor retains the ability to prevent a violation of the grant assurances:

(1). The lessee (second party, manager, etc.) agrees to operate the airport in accordance with the obligations of the lessor (public sponsor) to the federal government under applicable grant agreements or deeds. The lessee agrees to operate the airport for the use and benefit of the public; to make available all airport facilities and services to the public on fair and reasonable terms and without unjust discrimination; to provide space on the airport, to the extent available; and to grant rights and privileges for use of aeronautical facilities of the airport to all qualified persons and companies desiring to conduct aeronautical operations on the airport.

(2). The lessee/management firm specifically understands and agrees that nothing contained in the lease shall be construed as granting or authorizing the granting of an exclusive right within the meaning of 49 U.S.C. § 40103(e) and § 47107(a)(4).

(3). The lease/management agreement is subordinate to the sponsor's obligations to the federal government under existing and future agreements for federal aid for the development and maintenance of the airport.

#### **6.14. Airport Privatization Pilot Program.**

**a. Change of Sponsorship from Public to Private.** Leases or sales under the airport privatization pilot program, 49 U.S.C. § 47134, transfer the federal obligation as well as the responsibility for operation, management, and development of an airport from a public sponsor to a private sponsor. These leases and sales also transfer the federal obligations to the private operator, although the FAA may require the public agency transferring the airport to retain concurrent responsibility for certain assurances if appropriate.

**b. Exemption from Federal Obligations.** As an incentive for public airport operators to consider privatization under the privatization pilot program, Congress authorized the FAA to exempt a sponsor from its federal obligations to repay federal grants, to return federally acquired property, and to use the proceeds from the sale or lease of the airport for airport purposes. At commercial airports, the use of proceeds for nonairport purposes is subject to the approval of 65 percent (65%) of the air carriers serving the airport. An agency record of decision identifies all the applicable exemptions. Exemptions under the privatization pilot program are issued by the Administrator. Public inquiries on the pilot program should be referred to the Airport Compliance Division, ACO-100.

#### **6.15 Privatization Outside of the Airport Privatization Pilot Program.**

**a. General.** Sale or lease of a public airport to a private airport operator is not prohibited by law, and the FAA may be requested to approve a transfer of ownership or operating responsibility of a public airport to a private operator without an application for participation in airport privatization pilot program. FAA review of a request for release of the public sponsor from its obligations and for approval of a private operator as the new sponsor is conducted in accordance with the general review procedures in paragraphs 6.7 and 6.11 of this chapter. This review is similar to the review of a transfer between public airport owners and does not involve the specific requirements and findings of 49 U.S.C. § 47134.

**b. Private Operator as Airport Sponsor.** A privatization of a public airport by sale or long-term lease is distinguished from a management contract by the fact that the private operator becomes the airport sponsor. The private operator is the applicant for grants and is directly responsible to the FAA for compliance with the conditions and assurances in those grants. As with transfers under the privatization pilot program, the FAA may require the public agency transferring the airport to retain concurrent responsibility for certain assurances if appropriate. For example, FAA may require a transferring public agency to maintain its ability to use its local zoning power to protect approaches to the airport.

**c. Special Considerations.** While reviewing a transfer of responsibility for airport operations to a private operator is in many respects similar to reviewing any transfer of ownership and operation (public or private), reviewing for privatization outside the Airport Privatization Pilot Program should consider the following:

(1). The transfer will not be approved unless the private operator agrees to assume all of the existing obligations of the public sponsor under grant agreements and surplus and nonsurplus property deeds. For future grants, the private operator will agree to the assurances applicable to a private operator, but initially will also be obligated to comply with the public operator's assurances as long as they would have remained in effect for the public operator.

(2). The FAA may not exempt the public sponsor from the requirements of Grant Assurance 25, *Airport Revenues*. Accordingly, the public sponsor may use the proceeds from the sale or lease of the airport only for purposes stated in 49 U.S.C. § 47107(b) and § 47133.

(3). It is not necessary for the public sponsor to return to the FAA the unamortized value of grant-funded projects or surplus or nonsurplus property received from the federal government, as long as the grant-funded facilities and donated property continue to be used for the original airport purposes. To assure this continued use, the private operator should be required to agree specifically to continue the airport uses of grant-funded facilities and federally donated property for the purposes described in FAA grant agreements and property deeds.

(4). The private operator will be subject to the general AIP criteria for grants to private operators, and will not be subject to or benefit from the special provisions of the airport privatization pilot program. Accordingly, the private operator should be advised that it will not be eligible for apportionment of entitlement funds under 49 U.S.C. § 47114(c) or for imposition of a passenger facility charge at the airport.

(5). As with any change of airport owner/operator, FAA certificates do not transfer. If the airport is certificated under 14 CFR Part 139, that certification will not transfer to the private operator and would need to be reissued. Also, if the airport has a security plan in effect in accordance with Transportation Security Administration (TSA) regulations, TSA should be advised of the request for approval of the transfer of airport management responsibility. TSA will advise the airport sponsor if additional amendments are necessary.

**6.16. through 6.20. reserved.**

# Del Norte County Airport Jack McNamara Field Master Lease Agreement

This Master Lease is entered into by and between the County of Del Norte, a legal subdivision of the State of California, as the lessor ("County") and the Border Coast Regional Airport Authority, a Joint Powers Authority created under the laws of the State of California, as the lessee ("Authority").

WHEREAS, County is the owner of certain real property currently being used for a public airport in the County of Del Norte, State of California, known as Del Norte County Regional Airport, Jack McNamara Field, and described in Exhibit A, which is attached to and made a part of this lease (referred to in this lease as "the Airport"); and

WHEREAS, Authority desires to lease the Airport (together with certain appurtenant rights and easements) from County, subject to existing leases and obligations, for the purpose of developing and operating a public-use airport; now, therefore,

The parties agree as follows:

## ARTICLE 1. LEASE OF AIRPORT AND TERM OF LEASE

- 1.1 Agreement to Lease. For and in consideration of the rents to be paid and covenants to be performed by Authority under this lease, County agrees to lease the Airport to Authority, and Authority agrees to lease the Airport from County, on the terms and conditions set forth in this lease. "Airport" includes the real property, including all structures, fixtures and improvements upon the real property, plus any appurtenances and easements described in Exhibit A of this lease.
- 1.2 Initial Term of Lease. The initial term of this lease is ten (10) years commencing on January 1, 2009 and expiring on December 31, 2018.
- 1.3 Option to Extend Term. Upon the natural expiration of the term of this lease as specified in Section 1.2, Authority will have the option to extend the term of the lease for an additional period of five (5) years as long as Authority is not in default under this lease and all conditions to the exercise of the option are either satisfied or waived in writing by County. Authority may exercise the option only in accordance with this section. The

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option may be exercised by delivering written notice from Authority to County no later than one hundred eighty (180) days prior to the expiration of the term or of the then-current extension. The Exercise Notice must affirmatively state that the Authority exercises the option without condition or qualification. Failure to give notice of exercising the option will result in relinquishing further rights under this lease to any future option.

- 1.4 Additional Options to Extend Term. Upon the natural expiration of the extended term of the lease, if any, Authority will have the option to extend the term of the lease seven more times for additional periods of five (5) years each, commencing on the expiration of the extended term. The terms and conditions set forth in Section 1.3 also apply to the exercise of these additional options. The maximum total term of this Lease if all extensions are exercised is fifty (50) years

## ARTICLE 2. RENT

Authority shall pay to County without abatement, deduction, diminution, offset, or reduction the following sums during the term of the lease:

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- 2.1 Rent. As Rent, Authority must pay to County the sum of \$1.00 per year, payable in advance for each calendar year, commencing with 2009. Receipt of the 2009 rent by County is hereby acknowledged.
- 2.2 Rent to be Redetermined if Authority Chooses Extension of Term. Immediately following a timely exercise by the Authority of any option to extend this Lease as provided in Paragraphs 1.3 and 1.4, County and Authority shall meet in good faith to agree upon a fair and reasonable adjusted Rent for the Airport. These discussions must take into account: (i) the financial conditions of the parties, (ii) the Authority's ability to finance its operations and the then-current ACIP, (iii) the desirability for Authority to build and maintain a prudent schedule of reserves, (iv) the financial and other contributions and commitments of the Authority's member entities, including County, (v) the constraints on the use of Airport assets imposed by federal and other funding sources, and (vi) the adjustment of the Rent during the extension period due to past and projected changes in cost of doing business. If, after substantial good-faith efforts to reach agreement, the parties agree that their efforts have proven to be unsuccessful, the parties shall submit the sole issue of the amount of Rent to binding, final, and conclusive "baseball arbitration." Baseball arbitration is defined for purposes of this Lease to be a methodology in which the arbitrator must select either County's rent proposal or the Authority's rent proposal, whichever is determined by the arbitrator to be the most fair and reasonable adjusted Rent for the five-year extended rental period of the lease. The County and Authority will agree on a single arbitrator. If the parties cannot agree within seven (7) calendar days, an arbitrator will be randomly selected from a list of approved

arbitrators. All arbitrators on the approved list must be qualified real estate appraisers and licensed to practice in the State of California or the State of Oregon. The party whose rent proposal was not selected by the arbitrator shall pay all costs of the arbitration unless the arbitrator allocates the costs in a different manner. Prior to the commencement of the arbitration, the parties shall each deposit the arbitrator's full estimated cost of the arbitration with the arbitrator. The arbitrator shall be entitled to his actual fees and expenses and in furtherance of his award of costs may keep, refund, or transfer all or part the fees deposited with him or her. The arbitrator shall be entitled to a reasonable fee for the arbitration proceeding in accordance with industry standards and the level of licensing certification and experience of the appraiser.

- 2.4 Time and Place for Payment of Rent. Rent for 2010 is due upon execution of this lease and thereafter Rent is due on the 10<sup>th</sup> day of January of each year and is payable at the location and in the manner set forth for notices in Section 9.2.

### ARTICLE 3. USE OF AIRPORT

- 3.1 Permitted Use. Authority must use the Airport solely for the purpose of operating a public-use airport including, but not limited to, aviation-related, commercial, recreational, business, and medical uses. Authority is authorized to conduct all business necessary for those operations including, but not limited to, FAA approved planning, compliance, and development projects listed in the Airport Capital Improvement Program (ACIP) and entering into subleases with new and existing tenants. All uses and operations must be conducted for the benefit of the public on reasonable conditions and without unjust discrimination, consistent with the terms of the original grant of the Airport to Del Norte County by the United States of America under the Surplus Property Act and with the covenants and conditions of any grant assurances given as a condition of Airport Improvement Program (AIP) grant funding from the Federal Aviation Administration. Authority will be the sponsor for purposes of AIP funding.
- 3.2 Compliance with Laws. At Authority's own expense, Authority must comply with all applicable statutes, ordinances, regulations, and requirements of governmental entities, both federal and state, including those requiring capital improvements to the Airport or improvements and those relating to any use and occupancy of the Airport, whether those statutes, ordinances, regulations, and requirements are now in force or are subsequently enacted. If any license, permit, or other governmental authorization is required for the lawful use or occupancy of the Airport or any portion of the Airport, Authority must procure and maintain that authorization throughout the term of this lease. The judgment of any court of competent jurisdiction, or the admission by Authority in a proceeding brought against Authority by any government entity, that Authority has violated any

applicable statute, ordinance, regulation, or requirement of a governmental entity is conclusive as between County and Authority and constitutes grounds for termination of this lease by County, at County's option.

- 3.3 Prohibited Uses. Authority must not use or permit the Airport or any portion of the Airport to be improved, developed, used, or occupied in any manner or for any purpose that is in violation of any valid law, ordinance, or regulation of any federal, state, county, or local governmental agency, body, or entity. And Authority must not maintain, commit, or permit the maintenance or commission of any nuisance as now or hereafter defined by any statutory or decisional law applicable to the Airport.

#### **ARTICLE 4. CONSTRUCTION BY AUTHORITY**

- 4.1 Authority to Construct. Authority has authority to enter into all necessary contracts for the construction of improvements to the Airport, including but not limited to, all FAA-approved projects listed in the ACIP.
- 4.2 Ownership of Improvements. Title to all improvements, including a replacement Passenger Terminal, to be constructed on the Airport by Authority will be in the name of the Authority until expiration of the term or earlier termination of this lease. At the expiration of the term or the earlier termination of this lease, all improvements, including the Passenger Terminal, will automatically and without any further act of the Authority or any third party become County's property. Authority must transfer and surrender the improvements to County at the expiration of the term or earlier termination of this lease, free and clear of all liens and encumbrances, other than those, if any, permitted under this lease or otherwise created or consented to by County. Authority agrees to execute, acknowledge, and deliver to County any instrument requested by County as necessary in County's opinion to perfect County's right, title, and interest to the improvements and to the Airport.

#### **ARTICLE 5. MAINTENANCE, REPAIRS, AND SURRENDER**

- 5.1 Maintenance by Authority. At all times during the term of this lease, Authority must, at Authority's own cost and expense, keep and maintain the Airport, all improvements, and all appurtenances now or hereafter on the Airport in good order and repair, and in a safe and clean condition.
- 5.2 Requirements of Governmental Agencies. At all times during the term of his lease, Authority, at Authority's own cost and expense, must do all of the following:
- (a) Make all alterations, additions, or repairs to the Airport or the improvements on the Airport required by any valid law, ordinance, statute, order, or regulation now or hereafter

made or issued by any federal, state, county, local, or other governmental agency or entity;

(b) Observe and comply with all valid laws, ordinances, statutes, orders, and regulations now or hereafter made or issued respecting the Airport or the improvements on the Airport by any federal, state, county, local, or other governmental agency or entity;

(c) Should the Authority believe it to be advisable, contest by appropriate legal proceedings brought in good faith and diligently prosecuted in the name of Authority, or in the names of Authority and County when appropriate or required, the validity or applicability to the Airport of any law, ordinance, statute, order, or regulation now or hereafter made or issued by any federal, state, county, local, or other governmental agency or entity. Any contest or proceeding, although maintained in the names of Authority and County, must be without cost to County, and Authority must protect the Airport and County from Authority's failure to observe or comply during the contest with the contested law, ordinance, statute, order, or regulation; and

(d) Indemnify and hold County and the property of County, including the Airport, free and harmless from any and all liability, loss, damages, fines, penalties, claims, and actions resulting from Authority's failure to comply with and perform the requirements of this section.

- 5.03 Authority's Duty to Restore Airport. If at any time during this lease's term, any improvements now or hereafter on the Airport are destroyed in whole or in part by fire, theft, the elements, or any other cause not the fault of County, this lease will continue in full force and effect and Authority, at Authority's own cost and expense (including any insurance or disaster assistance payable to the Authority), must repair and restore the damaged improvements.
- 5.04 Application of Insurance Proceeds. Any and all fire or other insurance proceeds, or the proceeds of any state or federal disaster assistance, that become payable at any time during the term of this lease because of damage to or destruction of any improvements on the Airport must be paid to Authority and applied by Authority toward the cost of repairing and restoring the damaged or destroyed airport improvements. County must cooperate with Authority in applying for disaster assistance that may reasonably be thought to be available for the repair or restoration of damaged airport improvements, including acting as applicant where necessary or desirable.
- 5.05 Surrender of Airport. On expiration or earlier termination of this lease, Authority must surrender the Airport and all improvements in or on the Airport to County in as good, safe, and clean condition as is practicable. Additionally, Authority must transfer to County all

operational and capital accounts, and all accounts receivable, subleases, permits, and entitlements related to the Airport. Authority agrees to take all steps and execute any documents necessary or convenient to implement the terms of this paragraph.

## ARTICLE 6. INDEMNITY AND INSURANCE

6.1 Indemnity Agreement. Authority must indemnify, defend, and hold harmless the County, and its officers, employees, and agents, ("County indemnitees") from and against any and all causes of action, claims, liabilities, obligations, judgments or damages, including reasonable attorneys' fees and cost of litigation ("claims") arising out of the Authority's performance of its obligations under this lease or resulting from Authority's operations on or use of the Airport, including the performance or operation or use by Authority's officers, employees, agents, invitees, consultants, or contractors, and extending to all claims arising from the County's active or passive negligence but excepting claims arising from the County's sole negligence or willful misconduct. In the event County indemnitees are made a party to any action, lawsuit, or other adversarial proceeding arising from Authority's performance of this lease or operation or use of the Airport, Authority must provide a defense to the County indemnitees or at County's option Authority must reimburse County indemnitees their costs of defense, including reasonable attorneys' fees incurred in the defense of those claims.

6.2 Liability Insurance. Authority must, at Authority's own cost and expense, procure and maintain during the entire term of this lease a broad form comprehensive coverage policy of public liability insurance issued by an insurance company licensed by the State of California insuring Authority and County against loss or liability caused by or connected with Authority's occupation and use of the Airport under this lease in amounts not less than the following:

(a) \$ \_\_\_\_\_ for injury to or death of one person and, subject to that limitation for the injury or death of one person, of not less than \$ \_\_\_\_\_ for injury to or death of two or more persons as a result of any one accident or incident; and

(b) \$ \_\_\_\_\_ for damage to or destruction of any property.

County must be named as an additional named insured.

6.3 Fire and Casualty Insurance. Authority must, at Authority's own cost and expense, at all times during the term of this lease, keep all Improvements on the Airport insured for their full replacement value [or for \_\_\_\_\_ (number) percent of their full

replacement value] by insurance companies authorized to do business in the State of California against loss or destruction by fire and the perils commonly covered under the standard extended coverage endorsement to fire insurance policies in the county where the Airport are located.

- 6.4 Specific Perils to be Insured. The insurance required by Section 6.3 of this lease must, whether or not included in the standard extended coverage endorsement referred to in Section 6.3, insure all improvements on the Airport against loss or destruction by windstorm, earthquake, hail, explosion, riot, civil commotion, malicious mischief, vandalism, aircraft, fire, smoke damage, and sprinkler leakage.
- 6.5 Deposit of Insurance with County. Authority must, within ten (10) days after the execution of this lease and promptly thereafter when any policy is replaced, rewritten, or renewed, deliver to County a true and correct copy of each insurance policy required by this Article of this lease or a certificate executed by the insurance company or companies or their authorized agent evidencing that policy or policies.
- 6.6 Notice of Cancellation of Insurance. Each insurance policy required under this Article must contain a provision that it cannot be cancelled for any reason unless at least (30) thirty days' prior written notice of the cancellation is given to County in the manner required by this lease for service of notices on County by Authority.

#### **ARTICLE 7. ASSIGNMENT AND SUBLEASING**

- 7.1 Assignment of Current Leases to Authority. County assigns to Authority all its right, title and interest in and to all leases currently existing between County and tenants when this lease takes effect. Authority has all of the rights and remedies of County as landlord under those leases. All current leases are listed in Exhibit B.
- 7.2 Authority's Right to Sublease. Authority has the right to sublease a portion of the Airport from time to time. At all times during the term of this lease, Authority may exercise this right without County's further consent if the following conditions are met:
  - (a) Any and all subleases must be expressly made subject to all of the terms, covenants, and conditions of this lease; and
  - (b) Any sublessee must be required to attorn to County in the event of Authority's default or upon the natural expiration of this lease.
- 7.3 Authority May Not Assign Lease. Authority may not assign this lease to another party. Any attempt to do so is grounds for termination of the lease by County.

#### **ARTICLE 8. TERMINATION, DEFAULT, AND REMEDIES**

- 8.1 Termination by County. County will have the right to terminate this lease by giving Authority thirty (30) days written notice upon the happening of any of the following stated events:
- (a) Authority breaches or fails to perform any covenant, condition, or agreement contained in this lease and the breach has not been cured within thirty (30) days following written notice of default served on Authority by County;
  - (b) Authority is voluntarily or involuntarily dissolved or otherwise ceases to exist;
  - (c) Authority is found to be in violation of a statute, ordinance, regulation or requirement by the judgment of a court of competent jurisdiction and does not within a commercially reasonable time remedy or correct the violation;
  - (e) Authority attempts to assign this lease to another entity or person;
  - (f) The Airport ceases to be used as a public-use airport;
  - (g) Either the Authority or the Airport becomes for any reason ineligible for federal airport funds;
  - (h) Authority becomes insolvent.
- 8.2 Termination by Authority. Authority has the right to terminate this lease by giving County thirty (30) days written notice upon the happening of any of the following stated events:
- (a) Authority is dissolved, whether by operation of law or in accordance with the terms of its joint powers agreement, or otherwise cannot continue as a separate public entity;
  - (b) County for any reason does not keep the funding commitment specified in the then-current joint powers agreement of the Authority;
  - (c) Authority becomes insolvent.
- 8.3 Cumulative Remedies. The remedies given to County in this Article are not exclusive but are cumulative with and in addition to all remedies now or hereafter allowed by law and elsewhere provided in this lease.
- 8.4 Waiver of Breach. The waiver by County of any breach by Authority of any of the provisions of this lease will not constitute a continuing waiver or a waiver of any subsequent breach by Authority of either the same or a different provision of this lease.
- 8.5 No Recourse Against Authority Participants. Notwithstanding any provision in the laws of California or the State of Oregon, County agrees that any debts, liabilities or obligations

of the Authority as set forth in this lease will not be the debts, liabilities or obligations of the members or participants in the Authority.

#### **ARTICLE 9. OTHER PROVISIONS**

- 9.1 Utilities. Authority must pay all charges incurred for the furnishing of gas, electricity, water, telephone service, garbage or refuse service, and other public utilities to the Airport during the term of this lease. All payments must be made directly to the service provider before their delinquency.
- 9.2 Notices to County. Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this lease or by law to be served on or given to County by Authority must be in writing and will be deemed duly served and given when personally delivered to the Del Norte County Administrative Officer or, in lieu of personal service, when deposited in the United States mail, first-class postage prepaid, and sent by express mail that allows for tracking, addressed to the Del Norte County Administrative Officer at 981 H Street, Crescent City, California. County may change its address for the purpose of this section by giving written notice of that change to Authority in the manner provided in Section 9.3 of this lease.
- 9.3 Notices to Authority. Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this lease or by law to be served on or given to Authority by County must be in writing and will be deemed duly served and given when personally delivered to the Authority's Airport Director, or, in lieu of personal service, when deposited in the United States mail, first-class postage prepaid, and sent by express mail that allows for tracking, addressed to Authority's Airport Director at 150 Dale Rupert Road, Crescent City, California. Authority may change its address for the purpose of this section by giving written notice of that change to County in the manner provided in Section 9.2 of this lease.
- 9.4 Attorneys' Fees. Should any litigation be commenced between the parties to this lease concerning the Airport, this lease, or the rights and duties of either in relation thereto, the party prevailing in that litigation will be entitled, in addition to any other relief that may be granted in the litigation, to a reasonable sum as and for that party's attorneys' fees in that litigation.
- 9.5 Governing Law. This lease and all matters relating to this lease are governed by the laws of the State of California.
- 9.06 Severability. If any provision of this lease is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this lease will remain in full force and effect unimpaired by the holding.

9.07 Review. In order to assure the satisfaction of each of them with respect to the functionality and completeness of this Lease, the parties will meet and confer every three months during the first year of the Lease term. In connection with such periodic review, and by giving thirty (30) days advance notice, either party may reopen the terms of Articles 5 through 9 of the Lease for adjustment and further negotiation.

EXECUTED on \_\_\_\_\_, at Crescent City, California.

**LESSOR – County of Del Norte**

**AUTHORITY – Border Coast Regional  
Airport Authority**

By: \_\_\_\_\_  
Gerry Hemmingsen, Chair, Board of Supervisors

By: \_\_\_\_\_  
David Finigan, Chair, Board of  
Commissioners

APPROVED AS TO FORM

\_\_\_\_\_  
Dohn Henion, County Counsel

\_\_\_\_\_  
Robert N. Black, Attorney for  
Border Coast Regional Airport Authority

**AGREEMENT FOR PURCHASE AND SALE  
OF REAL PROPERTY**

**BY AND BETWEEN**

**THE COUNTY OF CURRY,**  
A POLITICAL SUBDIVISION OF THE STATE OF OREGON

**AND**

**THE CITY OF BROOKINGS,**  
AN OREGON MUNICIPAL CORPORATION

**PROPERTY:**  
BROOKINGS STATE AIRPORT  
LOCATED IN CURRY COUNTY, OREGON

# DRAFT 2.1

## AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY BROOKINGS STATE AIRPORT

This purchase and sale agreement (“this Agreement”) is entered into by and between the City of Brookings, an Oregon municipal Corporation, (referred to hereafter as the “Buyer”) and the County of Curry, a political subdivision of the State of Oregon, (referred to hereafter as the “Seller”) for the purchase and sale of the real property described herein.

### RECITALS

- A. Seller is the owner of the Brookings State Airport (the “Airport”) located in an unincorporated area of Curry County, Oregon. The Airport is a general aviation facility comprised of approximately 90 acres.
- B. The Airport is currently operating at a deficit of \$15,000 to \$30,000 per year.
- C. The Airport parcel contains 14 acres of undeveloped land.
- D. Buyer plans on funding the extension of city water and sewer services to the Airport, which will cost Buyer between \$800,000 and \$1,100,000.

### AGREEMENT

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Buyer and Seller agree as follows:

**1.0 Purchase and Sale.** Seller agrees to sell the Property (described in Section 2) to Buyer, and Buyer agrees to purchase the Property from Seller, on the terms conditions and covenants set forth in this Agreement.

**2.0 Property Description.** The Property that is the subject of this Agreement consists of the following:

**2.1 Real Property:** The Brookings State Airport parcel (as more particularly described in **Exhibit A** attached hereto and incorporated herein by this reference) and all improvements, including fixtures, thereon owned by Seller (the “Real Property”).

**2.2 Grant Funds:** (more particularly described in Exhibit B attached hereto and incorporated herein by this reference) (“Grant Funds”), a summary of which follows:

- a. [name] [amount]
- b. [name] [amount]

**2.3 Intangible Property:**

- a. All leases on the Airport parcel (more particularly described in **Exhibit C** attached hereto and incorporated herein by this reference).

# DRAFT 2.1

- b. All written and approved contracts and agreements pertaining to the Airport, its operation, maintenance or administration.

## 2.4 Personal Property:

- a. All sketches, blueprints, drawings, plans or other documents relating to any improvements or proposed improvements to the Airport.
- b. All manuals, warranties, instructions, and the like that relate to the property being transferred under this Agreement.

**3.0 Purchase Price.** The total Purchase Price for the Property is TWO HUNDRED NINETY-SEVEN THOUSAND ~~FIFTY-FOUR THOUSAND, FIVE HUNDRED EIGHTY-FIVE-DOLLARS~~ (\$254,585,297,000.00) (the "Purchase Price"). The Purchase Price is broken into two parts – (1) the present value of the undeveloped 14 acres (\$166,738,163,200) and the present value of the leases on the Airport parcel (\$89,585,133,800).

**4.0 Payment Terms.** The Purchase Price will be paid only after Buyer recovers its full cost of the City's share of extending city water and sewer services to the Airport (estimated at \$800,000 to \$1,100,000) plus an additional \$200,000. The additional \$200,000 is intended to represent Buyer's cost recovery associated with bringing the undeveloped 14 acres to market, i.e., developing a master plan, administration, marketing, etc. Payment of the Purchase Price will come from any combination of the following:

- a. System development charges for sewer and water received as a result of the development of the undeveloped 14 acres;
- b. Tax increment revenue received through the formation of a new urban renewal project area consisting of the Property herein acquired; and
- c. Proceeds from the resale of all or a portion of the undeveloped 14 acres.

## 5.0 Grant Funds.

**5.1 Assignment.** Seller will assign all remaining grant funds to Buyer as of the Closing Date (defined in **Section 11.3**).

**5.2 Local Match.** Seller will fulfill its local match obligations for all grant-funded projects in progress as of the Closing Date.

**5.3 Indemnification.** Seller agrees to indemnify Buyer, its officers, employees and agents, from any and all claims made by the Federal Aviation Administration ("FAA") for the recovery of grant funds dispersed to Seller and expended while Seller was owner of the Airport.

**6.0 Consent of Seller.**

**6.1 Formation of URA.** As part of this Agreement, Seller hereby consents to the formation of an urban renewal project area consisting of the Airport and the surrounding area.

**6.2 Annexation of Airport.** As part of this Agreement, Seller hereby consents to the annexation of the Airport parcel and the surrounding area into the City of Brookings.

**7.0 Pre-Conditions to Purchase.** Buyer is not obligated to purchase the Property unless the pre-conditions to Buyer's obligation to purchase have been satisfied or waived by Buyer.

**7.1 Title Review.** Seller must, within five (5) business days after the date of this Agreement (the "Contract Date"), deliver to Buyer a commitment for ALTA extended coverage owner's title insurance with respect to the Real Property (the "Title Report") to be issued to Buyer by the Title Company, including, without limitation, copies of all documents that establish exceptions to title and a correct legal description of the Real Property. In the event Buyer objects to any matter contained or referred to in the Title Report or any ALTA survey commissioned by Buyer, Buyer must deliver written notice of such objection to Seller no later than thirty (30) days after the Contract Date. Seller will then have five (5) business days after receipt of Buyer's objections within which to notify Buyer in writing as to which of matters objected to by Buyer Seller will or will not cure. Failure of Seller to notify Buyer within such period of its election will be deemed Seller's election not to cure all of such matters. If Seller elects or is deemed to have elected not to cure any or all of such matters, Buyer will have the right in its sole and absolute discretion to elect either (i) to terminate this Agreement, or (ii) to waive such matters. If Seller elects to cure any of such matters, such election will be a covenant of Seller, but Seller will have until the Closing Date to effect such cure. Those exceptions not objected to or subsequently waived by Buyer will be the "Permitted Exceptions." Buyer will not be obligated to purchase the Property unless Buyer and Seller have agreed upon the Permitted Exceptions.

**7.2 Seller's Documents Review.** Seller must, within ten (10) business days after the Contract Date, provide Buyer with complete and accurate copies of all of the following which apply to the Property and which are in Seller's possession or control: all contracts (including all Contract Obligations, as defined below); leases; permits; licenses; easements; covenants; utility agreements; plans, studies and reports (including, but not limited to, environmental, mechanical, structural, soils, traffic and engineering); property surveys; certificates of occupancy; elevator certificates; warranties (including warranties applicable to construction, equipment and fixtures); all utility bills, tax bills, and bills for any assessments or other governmental charges covering the most recent twenty-four (24)

# DRAFT 2.1

months; and all other current and historical information about the Property as Buyer requests (the "Seller's Documents"). "Contract Obligations" means those service contracts, utility contracts, construction contracts, maintenance agreements and all other contracts and obligations which relate to the ownership, operation, management, maintenance, use or occupancy of the Property which will or may continue in effect on or after the Closing Date. Buyer will not be obligated to purchase the Property unless Buyer has given written notice to Seller stating that it is satisfied with its review of the documents pursuant to this Section.

## **7.3 Buyer Inspection and Assessment of the Property.**

**7.3.1** During the period commencing on the Contract Date and terminating at 5:00 p.m. Pacific Time on the date which is ninety (90) days after the Contract Date (the "Contingency Period"), Buyer will have the right to conduct, at its sole cost and expense, such investigations, studies, surveys, appraisals, analyses and tests on and of the Property and its physical, environmental, economic and legal condition as Buyer, in its sole and absolute discretion, determines are necessary or desirable, including, without limitation, structural tests, soil tests, environmental audits and studies, and other engineering tests, and to make such evaluations as Buyer may, in its sole and absolute discretion, determine are necessary or desirable under the circumstances, all subject to **Section 7.3.3** below.

**7.3.2** In order to perform the foregoing investigations, Buyer, its agents, contractors and employees, will have reasonable access to the Property (subject to the rights of existing tenants), all for the purposes of inspecting the same and conducting tests, inspections, and analyses thereon and making evaluations thereof, all at Buyer's expense.

**7.3.3** Buyer will have the right to enter onto and inspect and test the Property, with the prior reasonable approval of Seller as to time and place, and to inspect all documents relating thereto, provided that: (i) Buyer will only have the right to conduct soils and groundwater tests and borings regarding the environmental condition of the Property or invasive testing of the Improvements with Seller's prior written consent, which may not be unreasonably withheld or delayed; and (ii) Buyer must defend, indemnify, protect and hold Seller, the Property, and Seller's officers, employees and agents harmless from and against any loss, cost, damage, or expense (including without limitation, reasonable attorneys' fees) incurred by Seller as a result of property damage, personal injury, or mechanics' liens, to the extent relating to or arising out of Buyer's inspection of the Property, except to the extent arising out of or relating to Seller's negligence.

# DRAFT 2.1

Notwithstanding the foregoing, Buyer will have no liability for the discovery of any matters in, on, at, or relating to the Property.

**7.3.4** All due diligence investigations, if any, and the results, reports, and other work product relating thereto (the “Buyer’s Due Diligence Materials”), will be Buyer’s property and solely for the benefit of Buyer. Buyer will not be obligated to purchase the Property unless Buyer has given Seller written notice that it is satisfied with the physical and environmental condition of the Property, pursuant to **Section 7.4**.

**7.4 Conditions Precedent.** Buyer’s obligation to purchase the Property or otherwise to perform any obligation provided in this Agreement is conditioned expressly upon the fulfillment to Buyer’s satisfaction (as determined by Buyer in its sole and absolute discretion) of each of the following conditions precedent within the time periods specified:

**7.4.1** Buyer’s review and approval of title as described in **Section 7.1** above. Additionally, Seller must on or prior to the Closing Date, remove all monetary liens not caused by Buyer and pay off and remove any assessments on the Property.

**7.4.2** During the Contingency Period, Buyer determining, to Buyer’s satisfaction, that Buyer can obtain an ALTA Extended Coverage Owner’s Policy of Title Insurance, together with such endorsements as Buyer may reasonably require (the “Owner’s Policy”), insuring Buyer in the amount of the Purchase Price that fee simple absolute title to the Real Property is vested in Buyer subject only to the Permitted Exceptions, all as set forth in a pro forma policy of title insurance to be delivered to and approved by Buyer prior to the expiration of the Contingency Period and re-issued to Buyer prior to the Closing Date.

**7.4.3** The issuance by the Title Company on the Closing Date, upon payment of its normal premium, of the Owner’s Policy.

**7.4.4** Buyer’s delivery of written notice to Seller on or before the end of the Contingency Period, of Buyer’s election in its sole and absolute discretion to proceed under the terms of this Agreement (the “Notice of Election to Close”). Buyer’s failure to timely deliver the Notice of Election to Close will automatically terminate this Agreement as if a written termination notice had been timely delivered.

## DRAFT 2.1

**7.4.5** As of the Closing Date, there must have been no material adverse change in the condition of the Property, or any portion thereof, or in any document, laws or governmental restrictions, the Contract Obligations or other circumstances affecting the Property previously approved by Buyer, including without limitation, the condition of title approved pursuant to **Section 7.1**.

**7.4.6** The conditions in **Section 7.1** through **7.4** are solely for the benefit of Buyer. At any time or times on or before the date for the satisfaction or waiver of each condition, at Buyer's election in its sole and absolute discretion, Buyer may waive any of the foregoing conditions by written notice to Seller. Other than Buyer's close of escrow pursuant to this Agreement which will waive all such unfulfilled conditions, no waiver will be effective unless made in writing specific as to the conditions or matters so waived. No such waiver will be inferred or implied by any act or conduct of Buyer or reduce the rights or remedies of Buyer arising from any breach of any undertaking, agreement, covenant, warranty, or representation of Seller under this Agreement. In the event any of the foregoing conditions or other conditions to this Agreement which are for the benefit of Buyer are neither fulfilled, nor waived pursuant as provided above, Buyer, at its election in its sole and absolute discretion, by written notice to Seller, may terminate this Agreement and be released from all obligations under this Agreement.

**8.0 Representations and Warranties of Seller.** Seller hereby makes the following representations and warranties to and for the benefit of Buyer, each of which (1) is material and being relied upon by Buyer; (ii) is made as an inducement to Buyer to enter into this Agreement and consummate the transaction contemplated hereby; (iii) is true in all respects as of the date of this Agreement; (iv) must be true in all respects on the Closing Date; and (v) will survive the close of escrow. Buyer will not be obligated to close if, as of the Closing, any of the following representations or warranties are not true.

**8.1** Seller has the full power, authority and legal right to enter into and perform this Agreement. The execution, delivery and performance of this Agreement and all documents and agreements executed or to be executed pursuant to this Agreement, have been duly authorized by all necessary action on the part of the Seller.

**8.2** Seller does not have knowledge of any condemnation, environmental, zoning or other land-use regulation proceedings, either instituted or planned to be instituted, which would detrimentally affect the use, operation or value of the Property. Seller will notify Buyer promptly of any such proceedings of which Seller becomes aware.

**8.3** At the time of Closing there will be no outstanding written or oral contracts made by Seller for any improvements to the Property which have not been fully paid for and

# DRAFT 2.1

Seller will cause to be discharged all actual or potential mechanics' and materialmen's liens arising from and labor or materials furnished to the Property prior to the time of Closing.

**8.4** There are no threatened or pending claims or litigation against Seller related to the Property.

**8.5** Seller is the legal and equitable owner of the Property, with full right to convey the same, and without limiting the generality of the foregoing, no person or entity has been granted any option or right of first refusal or first opportunity to acquire any interest in any of the Property. There is no unrecorded or undisclosed legal or equitable interest in the Property owned or claimed by any party other than Seller.

**8.6** Seller has not: (i) made a general assignment for the benefit of creditors; (ii) filed any voluntary petition in bankruptcy or suffered the filing of any involuntary petition by its creditors; (iii) suffered the appointment of a receiver to take possession of all or substantially all of its assets; or (iv) suffered the attachment or judicial seizure of all or substantially all of its assets.

**9.0 Representations and Warranties of Buyer.** Buyer hereby makes the following representations and warranties to and for the benefit of Seller, each of which: (i) is material and being relied upon by Seller; (ii) is made as an inducement to Seller to enter into this Agreement and consummate the transaction contemplated hereby; (iii) is true in all respects as of the date of this Agreement; and (iv) must be true in all respects on the Closing Date. Seller is not obligated to close if, as of the Closing, either of the following representations is not true:

**9.1** The execution and delivery of this Agreement have been duly authorized by all necessary action on the part of Buyer.

**9.2** Buyer has no knowledge of any pending or threatened actions or proceedings before any court or administrative agency that will materially and adversely affect the ability of Buyer to perform Buyer's obligations under this Agreement.

**10.0 Seller's Operating Covenant.** From the date of this Agreement to the Closing Date, Seller will: (i) manage, maintain, operate, and service the Property to the same standard as existed at the Contract Date; (ii) keep the Property and every portion thereof in good working order and repair; (iii) timely perform all its obligations under all Contract Obligations and any applicable laws and pay all bills, charges, invoices and other expenses arising in connection with the Property; (iv) not modify, terminate, cancel, extend, or amend any existing Contract Obligations, nor enter into any new contracts or arrangements which will affect the Property on or after the Closing Date; and (v) maintain in full force and effect all insurance with coverage.

**11.0 Title, Escrow and Closing.**

**11.1 Conditions of Title.** Seller will deliver to the Title Company a grant deed in the form attached as **Exhibit D**. Buyer's obligation to acquire the Property is subject to Title Company insuring title to the Real Property subject to no exceptions other than the Permitted Exceptions and the lien for local real estate taxes not yet due or payable.

**11.2 Title Insurance.** Buyer's obligation to purchase the Property is subject to and conditioned upon the issuance of the Owner's policy by the Title Company upon payment of its normal premium on the close of escrow of the transaction contemplated by this Agreement.

**11.3 Closing Date.** Within 5 days of the execution of this Agreement by both parties, Buyer will open escrow with \_\_\_\_\_ in Brookings, Oregon (the "Title Company"). The "Closing Date" will be the date the deed is recorded and may occur no later than December 31, 2012. The "Closing" consists of the performance of the deliveries and deposits set forth below and the recording of the deed.

**11.4 Deposits and Deliveries by Seller.** Seller will deposit or cause to be deposited into escrow with the Title Company on or before the Closing Date, the following documents duly executed and acknowledged as required:

- a. the executed deed;
- b. an assignment of leases;
- c. an assignment of grant funds;
- d. Seller's written escrow instructions to close escrow in accordance with the terms of this Agreement;
- e. Seller's executed settlement statement as prepared by the Title Company and approved by Buyer and Seller; and
- f. such other documents, resolutions, consents and affidavits reasonably necessary or advisable to effect the valid consummation of the transaction contemplated by this Agreement.

**11.5 Deposits and Deliveries by Buyer.** Buyer will deposit or cause to be deposited into escrow with the Title Company, on or before the Closing Date, each of the following documents duly executed and acknowledged as required:

- a. Buyer's written escrow instructions to close escrow in accordance with the terms of this Agreement;
- b. Buyer's executed settlement statement as prepared by the Title Company and approved by Buyer and Seller; and

## DRAFT 2.1

- c. such other documents, resolutions, consents and affidavits reasonably necessary or advisable to effect the valid consummation of the transaction contemplated by this Agreement.

**11.6 Closing.** The Title Company will close escrow when it is irrevocably committed to issue the Owner's policy and has received all of the documents listed in **Sections 11.4 and 11.5** above. The Title Company will close escrow by:

- a. Recording the deed;
- b. Issuing to Buyer the Owner's Policy;
- c. Delivering to Buyer the Assignment of Leases and Assignment of Grant Funds; and
- d. Delivering to Buyer and Seller copies of all other documents and things deposited or delivered through escrow, the originals of which are not being delivered by the Title Company to such parties, together with Title Company's final Buyer's and Seller's closing statements for this transaction.

**11.7 Prorations.** As of the Closing Date, the following will be prorated: utilities and other Real Property operation and maintenance expenses, any insurance premiums (as to those policies, if any, that Buyer continues after the Closing).

**11.8 Closing Costs.** Seller will pay the cost of the standard ALTA coverage title insurance premiums for the Owner's Policy (but only for a liability amount equal to the Purchase Price), one-half of escrow fees, and Seller's legal fees and costs incurred in connection with this transaction.

**11.9 Possession.** Buyer will be entitled to possession of the Property and the Seller's Documents on the Closing Date. Seller will transfer and deliver to the Buyer on the Closing Date the originals of all approved written Contract Obligations, all instruments and documents evidencing or relating to the Intangible Property, files, books and records, correspondence and all other documents transferred to Buyer by this Agreement which have not yet been delivered to Buyer.

**11.10 Cooperation.** Without further consideration, Seller will execute, acknowledge and deliver to Buyer on or after the Closing Date any and all other instruments or documents, and do and perform any other acts which may be required or which Buyer may reasonably request in order to fully assign, transfer and convey to Buyer, and vest in Buyer, the Property, and each and every part and component thereof.

# DRAFT 2.1

## 12.0 Default – Damages.

**12.1 Buyer Default.** In the event that: (i) all of the conditions to this Agreement have been satisfied, or waived in writing by Buyer; (ii) Seller has performed or tendered performance of all of its obligations under this Agreement; and (iii) Buyer defaults in its obligations to purchase the Property, then Seller will have all remedies available to it at law but may not assert any equitable remedies, including, without limitation, specific performance.

**12.2 Seller Default.** In the event that: (i) Buyer has performed or tendered performance of all of its obligations under this Agreement; and (ii) Seller defaults in its obligations under this Agreement, then Seller must pay to Buyer, Buyer's actual out-of-pocket costs related to such failure to perform, including the costs of test and investigations and the hiring of professionals. This provision may not be deemed a limitation of remedies, and Buyer will have all remedies available to it at law and in equity in the event of a Seller default, including specific performance.

## 13.0 Indemnification.

**13.1 Seller's Indemnity.** Seller agrees to defend (with counsel approved by Buyer in its sole and absolute discretion), indemnify and hold harmless Buyer, its officers, employees and agents ("the Indemnified Parties"), from any and all claims, demands, liabilities, losses, damages, costs and expenses including, without limitation, all reasonable attorneys' fees, asserted against, incurred or suffered by the Indemnified Parties resulting from: (i) any breach by Seller of this Agreement; (ii) any liability or obligation of Seller which Buyer is not required to assume under this Agreement or accruing prior to such assumption; (iii) any personal injury or property damage occurring in, on or about the Property or relating thereto on or before the Closing Date, from any cause whatsoever except Buyer's inspection activities; or (iv) the untruth, inaccuracy or breach of any of the representations, warranties, covenants and agreements made by Seller pursuant to this Agreement. The obligations of Seller under this Section will survive the close of escrow and will terminate twelve (12) months after the Closing Date for all claims except any which have been made in writing and delivered to Seller on or prior to the end of such twelve (12) month period. Neither the foregoing nor any other provision of this Agreement limits the rights and remedies available to Buyer at law or in equity, whether by statute or otherwise, and all such rights and remedies are cumulative and non-exclusive.

**13.2 Buyer's Indemnity.** Buyer agrees to defend, indemnify, protect and hold harmless Seller, its officers, employees and agents ("Indemnified Parties") from any and all claims, losses, damages, costs or expenses including, without limitation, any reasonable attorneys' fees, asserted against, incurred or suffered by the Indemnified Parties resulting from any damage to the Property caused by Buyer and not restored and

## DRAFT 2.1

from any breach by Buyer following the Closing Date of express obligations of Buyer arising under this Agreement, subject to the damage limitation of **Section 12**. The obligations of Buyer under this Section will survive the close of escrow and will terminate twelve (12) months after the Closing Date for all claims except any which have been made in writing and delivered to Buyer on or prior to the end of such twelve (12) month period.

**14.0 Damage and Destruction; Condemnation.** Seller must notify Buyer immediately of the occurrence of any damage to or destruction of the Property, or the institution or maintenance of any condemnation or similar proceedings with respect to the Property. In the event of any damage to or destruction of the Property for which the cost to repair exceeds \$25,000, or in the event any such condemnation or other proceedings are instituted or maintained, Buyer at its option either (i) may terminate this Agreement as provided in **Section 7** above, or (ii) may consummate the purchase evidenced by this Agreement. In the event that Buyer elects to consummate the purchase pursuant to (ii) above, all insurance or condemnation proceeds, including business interruption and rental loss proceeds, collected by Seller prior to the Closing Date, together with an amount equal to all deductible amounts under the insurance policies covering such damage or destruction, will be credited against the Purchase Price on Buyer's account, and all insurance or condemnation proceeds arising out of such damage or destruction or proceedings and not collected prior to the Closing Date will be assigned by Seller to Buyer on the Closing Date, and all such deductible amounts not credited against the Purchase Price will be immediately paid by Seller to Buyer.

**15.0 Commissions.** Each party to this Agreement warrants to the other that no other person or entity can properly claim a right to a real estate commission, broker's fee, real estate finder's fee, real estate acquisition fee or other real estate brokerage-type compensation (collectively, "Real Estate Compensation") based upon the acts of such warranting party with respect to the transaction contemplated by this Agreement. In the event of a claim for Real Estate Compensation on account of this Agreement: (i) Buyer, if such claim is based upon any agreement alleged to have been made by Buyer, must indemnify and defend Seller against and hold Seller harmless (using counsel reasonably satisfactory to Seller) from any and all damages, liabilities, costs, expenses and losses (including attorneys' fees and costs) that Seller sustains or incurs by reason of such claim; and (ii) Seller, if such claim is based upon any agreement alleged to have been made by Seller, must indemnify and defend Buyer against and hold Buyer harmless (using counsel reasonably satisfactory to Buyer) from any and all damages, liabilities, costs, expenses and losses (including, without limitation, attorneys' fees and costs) that Buyer sustains or incurs by reason of such claim. The provisions of this Section will survive the termination of this Agreement or the Closing.

### **16.0 General Provisions.**

**16.1 Notices.** Any notice required or permitted to be given under this Agreement must be made in writing with all postage and delivery charges prepaid and (i) personally delivered, (ii) sent by U.S. Mail, registered or certified, (iii) sent by Federal Express or other reputable overnight courier service, or (iv) transmitted by facsimile or email with a

# DRAFT 2.1

hard copy sent simultaneously by any of the above means, and in all cases addressed as follows:

**To Seller:** Curry County Board of Commissioners  
Attn: Airport Manager  
94235 Moore Street, Suite 122  
Gold Beach, OR 97444

**To Buyer:** City of Brookings  
Attn: Gary Milliman  
878 Elk Drive  
Brookings, OR 97415

**16.2 Entire Agreement; Modification.** This Agreement, together with the attached exhibits, incorporates all agreements, warranties, representations, and understandings between the parties to the Agreement with respect to the subject matter of this Agreement and constitutes the entire agreement of Seller and Buyer with respect to the purchase and sale of the Property. This Agreement may not be modified or amended except by a writing signed by both parties.

**16.3 Time of Essence.** Time is of the essence in the performance of the parties' respective obligations set forth in this Agreement.

**16.4 Attorney's Fees.** If either Buyer or Seller brings a suit or action based on the performance or interpretation of this Agreement, the prevailing party will be entitled to recover all costs and expenses including reasonable attorneys' fees.

**16.5 Successors and Assigns.** This Agreement may not be assigned by Seller or Buyer without the prior written consent of the other party, which may be granted or withheld by the other party in its sole and absolute discretion. Subject to the foregoing provision, this Agreement will inure to the benefit of and be binding upon the parties to this Agreement and their respective successors and assigns.

**16.6 Construction.** This Agreement will be governed by and construed in accordance with the laws of the State of Oregon. Words used in the singular include the plural, and vice-versa, and any gender includes the other. The captions and headings of this Agreement are for convenience of reference only and do not define or limit the provisions of this Agreement. Further, each party acknowledges that such party and its counsel, after negotiation and consultation, have reviewed and revised this Agreement and the exhibits, and, given the opportunity each has had to comment, each have drafted it. As such, the terms of this Agreement and the exhibits to it will be fairly construed and the usual rule of construction, to the effect that any ambiguities should be resolved against the drafting

## DRAFT 2.1

party, will not be employed in the interpretation of this Agreement or any amendments, modifications, or its exhibits. If any provision of this Agreement is determined to be illegal or unenforceable, such determination will not affect any other provision of this Agreement and all such other provisions will remain in full force and effect.

**16.7 No Waiver.** No waiver of any of the provisions of this Agreement will constitute a waiver of any other provision, whether or not similar, nor will any waiver constitute a continuing waiver, nor will a waiver in any instance constitute a waiver in any subsequent instance. No waiver will be binding unless executed in writing by the party making the waiver.

**16.8 Further Acts.** Each party, at the request of the other, will execute, acknowledge or have notarized (if appropriate) and deliver in a timely manner such additional documents, and do such other additional acts, also in a timely manner, as may be reasonably required in order to accomplish the intent and purposes of this Agreement.

**16.9 No Third-Party Beneficiaries.** Seller and Buyer do not intend by any provision of this Agreement to confer any right, remedy or benefit upon any third party, and no third party will be entitled to enforce, or may otherwise acquire any right, remedy or benefit by reason of, any provision of this Agreement.

**16.10 No Merger.** The provisions of this Agreement will not merge with the delivery of the deed but will, except as otherwise provided in this Agreement, survive the Closing.

**16.11 Statutory Disclaimer.** BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF

# DRAFT 2.1

NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009.

**16.12 Counterparts.** This Agreement or its exhibits may be executed in one or more counterparts and each such counterpart will be deemed to be an original; all counterparts so executed will constitute one instrument and will be binding on all of the parties to this Agreement notwithstanding that all of the parties are not signatory to the same counterpart. Facsimile or electronically transmitted copies of this Agreement signed by the parties will be binding and enforceable as if the same were executed originals.

**IN WITNESS WHEREOF**, Buyer and Seller have executed this Agreement this \_\_\_\_ day of \_\_\_\_\_, 2012 in Brookings, Oregon.

## City of Brookings ("Buyer")

\_\_\_\_\_  
Mayor Ron Hedenskog

Attest:

\_\_\_\_\_  
City Recorder Joyce Heffington

APPROVED AS TO FORM:

\_\_\_\_\_  
Martha D. Rice, City Attorney

## Curry County ("Seller")

\_\_\_\_\_  
Commissioner

Attest:

\_\_\_\_\_  
Commissioner

APPROVED AS TO FORM:

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Gerry Herbage, County Counsel

**Chapter 96  
NOISE CONTROL**

**Section**

- 96.01 Title
- 96.02 Definitions
- 96.03 Prohibitions
- 96.04 Exceptions
- 96.05 Administration and Enforcement

C. Audio or visual equipment, includes, but is not limited to compact disc players, phonographs, radios, stereo systems, tape players, tape recorders, televisions, and video cassette recorders;

D. Domestic tools, such as chain saws, electric drills, electric saws, hammers, lawn mowers, leaf/snow blowers, and similar tools;

E. Loudspeakers or public address systems;

F. Motor vehicle engines, exhaust systems or tires, other than regular traffic on a highway, road or street;

G. Musical Instruments;

H. Parties;

I. Domestic Animals;

J. Spoken speech.

(Ord. 99-07, passed 10-20-99)

**§96.01 TITLE.**

This chapter may be referred to as the Noise Control Ordinance. (Ord. 99-07, passed 10-20-99)

**§96.02 DEFINITIONS.**

The following definitions shall apply to this chapter.

**NOISE SENSITIVE UNIT.** Property normally used for sleeping, or, when in use, schools, churches, hospitals, public parks or public libraries. Property used in industrial or agricultural activity is not a noise sensitive unit unless it also meets the above criteria in more than an incidental manner.

**PLAINLY AUDIBLE SOUND.** Unambiguously communicated sound that is spoken speech, music, or mechanical or electronic noise.

**SOUND PRODUCING SOURCE.** Anything that is capable of making sound that can be measured by a sound level meter as provided by this chapter. Includes, but is not limited to, the following:

A. Air conditioning or heating units, heat pumps, refrigeration units (including those mounted on motor vehicles), and swimming pool or hot tub pumps;

B. Air horns, bells, or sirens;

**§96.03 PROHIBITIONS.**

Within the jurisdiction of the Umatilla County Board of Commissioners, no person or entity may produce or permit to be produced, with a Sound Producing Source, sound that:

A. When measured at or within the boundary of property on which a Noise Sensitive Unit is located (not the unit that is source of the sound unless the unit is a public park):

(1) Exceeds 50 dBA at any time between the hours of 10:00 p.m. to 7:00 a.m.; or

(2) Exceeds 60 dBA at any time between the hours of 7:00 a.m. to 10:00 p.m.; or

(3) Is Plainly Audible at any time between the hours 7:00 a.m. to 10:00 p.m. at a distance of at least 100 feet from the source of the sound.

B. Is Plainly Audible at any time between the hours of 10:00 p.m. to 7:00 a.m.:

(1) Within a Noise Sensitive Unit that is not the source of the sound; or

(2) On a County Road or Public Road right-of-way at a distance of at least 50 feet from

the source of the sound.  
(Ord. 99-07, passed 10-20-99)

**§96.04 EXCEPTIONS.**

The following are exceptions to the prohibitions contained in this chapter.

A. Sound caused by organized athletic or other group activities, when such activities are conducted on property generally used for such purposes, such as stadiums, fairgrounds, schools, churches and athletic fields.

B. Sound caused by emergency work, or by the ordinary and accepted use of emergency equipment, motor vehicles, and apparatus, regardless of the location or entity performing work.

C. Sound caused by bona fide use of emergency warning devices and alarm systems.

D. Sound caused as the result of unplanned and unanticipated personal accidents or emergencies.

E. Sound regulated by federal law, including, not limited to, sound caused by railroad, aircraft or commercially licensed watercraft operations.

F. Sound caused by blasting activities when performed under a permit issued by the appropriate governmental authorities and only between the hours of 9:00 a.m. to 4:00 p.m., excluding weekends.

G. Sound caused by industrial, agricultural, commercial or construction activities.

H. Sound caused by regular vehicular traffic on a Public or County Road, parking lot, or other premises open to the general public for the use of motor vehicles, regardless of ownership or use fee charge.

I. Sound caused by domestic tools between the hours of 7:00 a.m. to 10:00 p.m.  
(Ord. 99-07, passed 10-20-99)

**§96.05 ADMINISTRATION AND ENFORCEMENT.**

1. The provisions of this chapter shall be enforced under the procedure set out in Chapter 38 of the Umatilla County Code of Ordinances.

2. No written warning shall be necessary prior to the issuance of a citation.

3. For purposes of this chapter, a continuing violation shall be sound that occurs at least once beyond a 24 hour period.  
(Ord. 99-07, passed 10-20-99)

## A NOISE CONTROL ORDINANCE FOR WASHINGTON COUNTY

A county may by ordinance regulate, restrict, or prohibit the production or emission of loud noises or amplified speech, music, or other sounds that tend to annoy, disturb, or frighten the citizens.

*For state law as to authority of county to regulate, restrict or prohibit loud noises see G.S. 153A-133.*

### SECTION 1. DEFINITIONS

- (1) Construction.  
On-site fabrication, installation, alteration, erection, demolition or removal of any structure, facility or addition thereto, including all related activities, including, but not restricted to, clearing of land, earth moving, blasting and landscaping.
- (2) Emergency Work.  
Work made necessary to restore property to a safe condition, work required to protect, provide or prevent persons or private property from danger or harm or potential danger, or work by private or public utilities when restoring utility service.
- (3) Person.  
Any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this State, any other state or political subdivision or agency thereof or any legal successor, representative, agent or agency of the foregoing.
- (4) Residential Area.  
Any area, subdivision, street, or road which upon exists at least 20 homes per mile.
- (5) Sound Magnifying Device.  
Any device or machine for the magnification of a human voice, music or any other sound, "sound-magnifying device" shall not include emergency warning devices on police, fire, ambulance or other emergency vehicles, nor shall it include horns or steam whistles which are used for purposes authorized by Section 2.
- (6) Unnecessary Noise.  
Any excessive or unusually loud sound or any sound which disturbs the peace and quiet of any neighborhood or which does annoy, disturb, injure or endanger the

comfort, repose, health, peace or safety of any person or causes damage to property or business.

## **SECTION 2. PROHIBITED NOISES**

- (1) The creation of any unreasonably loud, disturbing and unnecessary noise in Washington County is prohibited. Noise of such character, intensity and duration as to be detrimental to the health, safety, or welfare of any individual is also prohibited.
- (2) For the purposes of the Washington County Noise Ordinance, a loud, disturbing, and unnecessary noise includes, but is not limited to:
  1. The sounding of any horn or signal device on any automobile, motorcycle, bus, or other vehicle, except as a danger signal, so as to create any unreasonably loud or harsh sound, or the sounding of such device for an unnecessary and unreasonable period of time, or the use of any gong or siren upon any vehicle, other than police, fire, or other emergency vehicle.
  - (2) The playing of any radio, phonograph, television, loudspeaker, amplifier or musical instrument in such manner or with such volume as to annoy or disturb the quiet, comfort, or repose of any person in any dwelling, hotel, or other type of residence.
  - (3) The playing of any vehicle mounted equipment in such a manner that it may disturb or distract drivers of other vehicles or disturb the property owners along the thoroughfare.
  - (4) The keeping of any animal or bird which, by causing frequent or long-continued noise, shall disturb the comfort and repose of any person in the vicinity.
  - (5) The use of any automobile, motorcycle, or other vehicle so out of repair, so loaded, or in such manner as to create loud or unnecessary grating, grinding, rattling, or other noise.
  - (6) The blowing of any steam whistle attached to any stationary boiler except to give notice of the time to begin or stop work or as a warning of danger.
  - (7) The discharge into the open air of the exhaust of any steam engine, stationary internal combustion engine, motor vehicle, or motor boat engine, except through a muffler or other device which will effectively prevent loud or explosive noises therefrom.
  - (8) The use of any mechanical or electronic device unless the noise created thereby is effectively muffled and reduced.

- (9) The erection (including excavation), demolition, alteration, or repair of any building in a residential or business district other than between the hours of 7:00 a.m. and 6:00 p.m. on weekdays except in the case of urgent necessity in the interest of public safety, and then only with a permit from the Building Inspector, which permit may be renewed for a period of three days or less while the emergency continues.
- (10) The creation of any excessive noise on any street adjacent to any school, institution of learning, or court while same is in session, or within 150 feet of any hospital, which unreasonably interferes with the working of such institution; provided, that conspicuous signs are displayed in such street indicating that the same is a school, court, or hospital street.
- (11) The creation of any excessive noise on Sundays on any street adjacent to any church; provided, that conspicuous signs are displayed in such streets adjacent to churches indicating that the same is a church street.
- (12) The creation of loud and excessive noise in connection with the loading or unloading of any vehicle or the opening and destruction of bales, boxes, crates, and containers.
- (13) The sounding of any bell or gong attached to any building or premises, which disturbs the quiet or repose of persons in the vicinity thereof.
- (14) The sounding and crying of peddlers, barkers, hawkers, and vendors which disturb the quiet and peace of the neighborhood.
- (15) The use of any drum, loudspeaker, or other instrument or device for the purpose of attracting attention, by creation of noise, to any performance, show, or sale or display of merchandise.
- (16) The use of any loudspeakers or amplifiers on trucks or other moving vehicles for advertising or other purposes except where specific permit is received from the chief of police of the town and then only under the terms and conditions set forth in such permit.
- (17) The conducting, operating, or maintaining of any garage or filling station in any residential district so as to cause loud or offensive noises to be emitted therefrom between the hours of 11:00 p.m. and 8:00 a.m.
- (18) The firing or discharging of a gun, squibs, fire crackers, gunpowder, or other explosive or combustible substance in the streets or elsewhere for the purpose of making a noise or causing a disturbance.

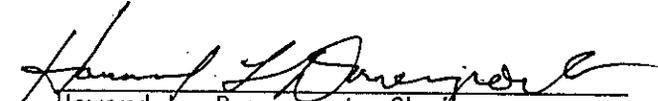
### SECTION 3. EXCEPTIONS

- (1) Emergency warning devices or safety signals;
- (2) Lawn care equipment and agricultural equipment used during the daytime hours;
- (3) Equipment being used for construction, provided that all equipment is operated with all standard equipment, manufacturer's mufflers and noise-reducing equipment in use in proper operating condition.
- (4) Parades, fairs, circuses, other similar entertainment events, sanctioned sporting events, sporting activities taking place in areas set aside for such activities, or any activities normally associated with any of the above;
- (5) Bells, chimes and similar devices, such as those on tower clocks, or steeples, which operate during daytime hours for a duration of no longer than <sup>(15)</sup> minutes in any given period;  
fifteen (JA)
- (6) Emergency work,
- (7) Sixty-cycle electric transformers; or
- (8) All usual and ordinary noises associated with agricultural enterprises including those made at night.

### SECTION 4. PUNISHMENT

Any person violating any of the provisions of this Ordinance shall be deemed guilty of a misdemeanor and upon conviction thereof, may be fined no less than \$25.00 or no more than \$50.00 or be imprisoned no more than thirty (30) days, or be both fined and imprisoned. Each violation of this Ordinance that is committed or permitted to continue shall constitute a separate offense.

Adopted this the 5<sup>th</sup> day of June 2000.

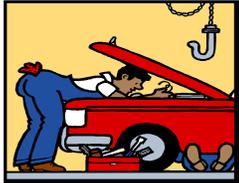
  
Howard L. Davenport, Chairman

  
Lois C. Askew, CMC  
Clerk to the Board



**Marion County**  
OREGON

## Code Enforcement Noise Regulations



*Protecting the health and safety  
of the county's residents and  
visitors, and the livability of the  
community*

Marion County Code Enforcement  
Sheriff's Office, Marion County Courthouse  
100 High St. NE, Salem, Oregon  
Phone: (503) 373-4333  
email: [enforcement@co.marion.or.us](mailto:enforcement@co.marion.or.us)

### Does the County have noise regulations?

Yes. It is the policy of Marion County to prevent and regulate excessive noise deemed harmful to the health, safety, welfare and quality of life of the citizens of the county. This policy is enforced through County Code Chapter 8.45. Marion County Code Enforcement coordinates with the Sheriff's Office handling noise complaints.

### What types of noise complaints are covered under the County's Noise Ordinance?

A noise disturbance is any unreasonable sound that annoys, disturbs, injures, or endangers the comfort, repose health, peace, or safety of others. For example:

- excessively loud tv, stereo or loudspeakers;
- party noises continuing late into the night;
- motor vehicle engine or exhaust long term revving and idling;
- domestic power equipment running between 10:00 p.m. and 7:00 a.m.;
- commercial construction starting too early in the day or too late into the evening;
- auxiliary equipment on vehicles (pumps, (refrigeration units, compressors, etc.)
- off-road vehicles

### We don't have authority to enforce:

- noise complaints inside any city limits;
- barking dogs;
- emergency vehicle warning sounds when responding to/from an emergency;
- sounds made for the purpose of obtaining a profit in money by farming;
- sounds from normal operation of timber and other forest product harvesting;
- sounds from organized athletic, religious, educational, civic or other group activities,

- between 7 a.m. and 10 p.m. on property generally used for those purposes;
- sounds made in conjunction with permitted industrial or commercial uses;
- sounds from activities by/on direction of Marion County or the state of Oregon in maintenance, construction or repair of public improvements;
- sounds regulated by federal and state law;
- motor vehicles on a public road unless idling for more than 15 consecutive minutes plainly audible within a dwelling within night time hours.

### How do you determine "excessive noise"?

Outside the Salem-Keizer Urban Growth Boundary: using a sound measuring device at the complainant's property line closest to the noise source, or within the complainant's dwelling unit if it is on the same property as the noise source but not the source of the sound, the sound level shall not exceed 55 dBA between 10:00 p.m. and 7:00 a.m. or 65 dBA between 7:00 a.m. and 10:00 p.m. except if the sound producing device is an off-road vehicle (see below).

Within the Salem-Keizer Urban Growth Boundary: it is unlawful to knowingly create any noise disturbance or sound plainly audible within any dwelling unit other than the source between 10:00 p.m. and 7:00 a.m. the following day. The following acts are declared noise disturbances: dynamic braking devices, idling engines more than 15 consecutive minutes between 10:00 p.m. and 7:00 a.m. and motor vehicle repair and testing during the same time period, steam whistles, and sirens. Generally speaking, maximum sound levels are 55 dBA during the day and 45 dBA at night for residential or noise

sensitive areas. Commercial areas are allowed 60 dBA during the day and 55 at night; industrial areas are allowed 65 dBA during the day and 60 dBA at night, with certain exceptions for domestic power equipment, commercial construction, etc.

### **What about off-road vehicles (motorcycles, dirt bikes, ATVs, etc.)?**

Marion County Code Chapter 10.25 covers off-road vehicles and states that: (1) “No person shall operate or allow anyone else to operate an off-road vehicle on any non-road area within the urban growth boundary of any city. (2) No person shall operate or allow anyone else to operate an off-road vehicle on any non-road area between the hours of 9:00 p.m. and 8:00 a.m. (3) No person shall operate or allow anyone else to operate an off-road vehicle on any non-road area for more than three hours between 8:00 a.m. and 9:00 p.m.” These regulations do not cover off-road vehicles used in farming or timber production.

### **How can I file a complaint?**

Generally speaking, noise disturbances during evening or nighttime hours should be reported to the Sheriff’s Office non-emergency number at (503) 588-5032. Noise disturbances during the day requiring noise monitoring (off-road vehicles, commercial activity in a residential area, etc.) should be reported to Code Enforcement. County noise regulations require that a citizen provide proof, in the complaint, that he/she made a good faith effort to contact enforcement authorities while the disturbance was occurring. If County staff does not observe the disturbance, the complaint must be signed by two individuals who represent at least two properties within 500 yards of where the violation occurred.

See staff contact information on the front of this brochure. You can also use the complaint form from our website:

<http://publicworks.co.marion.or.us/enforcement/PDF/Complaint.pdf>

### **Are complainants required to identify themselves?**

Yes, if the noise disturbance is not observed by either Code Enforcement or Sheriff’s Office personnel. As noted in those situations, the complaint must be signed by two individuals who represent at least two properties within 500 yards of where the violation occurred. However, complainant information is kept strictly confidential.

### **What is the enforcement process?**

Complaints vary greatly, necessitating flexibility in how they are processed, particularly those involving significant threat to public health and safety. The following is a general guideline for complaints handled by Code Enforcement:

Step 1: Complaint received and prioritized.

Step 2: Site visit to verify violation.

Step 3: Report prepared with investigation results and action necessary to correct.

Step 4: Notice of Violation sent to property owner and other responsible persons.

Step 5: If corrections are not made a citation may be issued.

Step 6: If a citation is issued, a date for arraignment at Justice Court or hearing before a County Hearings Officer is set.

### **How to avoid conflicts:**

A few thoughtful questions to your neighbors might help you avoid conflicts and intervention from the Sheriff’s Office or Code Enforcement: 1) Ask your neighbors if any

exterior noises (that seem “ok” to you) are disturbing them; 2) Get to know your neighbors and their schedules, i.e. day sleepers; and 3) When you stand outside with the doors and windows shut can you hear your stereo, tv, or other? A little consideration goes a long way in neighbor-to-neighbor relations.

### **What are other Marion County agencies involved in noise-related enforcement?**

Planning Division [(503) 588-5038] handles zoning including home-based businesses; mass gatherings, gravel operations, etc. Sheriff’s Office [(503) 588-5032] handles evening or nighttime complaints. Dog Control [(503) 588-5366] can answer questions about barking dogs.

### **What community resources are available if I’m under enforcement or have a neighbor that needs assistance?**

Neighbor-to-Neighbor: (503) 588-5253. Free, confidential and voluntary process that enables people in conflict to reach a mutually satisfying resolution with the help of a neutral third party. Mediation does not involve counseling or legal advice.

**For more information, visit our web site at [publicworks.co.marion.or.us/enforcement](http://publicworks.co.marion.or.us/enforcement).**

